IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 4564 of 2007(S)

OA.438/2006 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:
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1. UNION OF INDIA, REP. BY THE SECRETARY
DEPARTMENT OF REVENUE, NORTH BLOCK,NEW DELHI.

2. THE CHAIRMAN, CENTRAL BOARD OF
EXCISE & CUSTOMS, NORTH BLOCK,NEW DELHI-1.

3. THE CHIEF COMMISSIONER OF
CENTRAL EXCISE & CUSTOMS,
CENTRAL REVENUE BUILDINGS, I.S.PRESS ROAD,
KOCHI-682 018.

4. THE COMMISSIONER OF CENTRAL EXCISE &
CUSTOMS, CENTRAL REVENUE BUILDINGS,
I.S. PRESS ROAD, KOCHI-682 018.

BY ADV. SRI.P.R.RAMACHANDRA MENON, ADDL.CGSC

RESPONDENT:

P.T. CHACKO, TAX ASSISTANT,
CENTRAL EXCISE DIVISIONAL OFFICE,KOTTAYAM.

BY ADV. SRI.C.S.GOPALAKRISHNAN NAIR
SMT.CHANDINI G.NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.4564/2007

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF THE OA 438/06 WITH ANNEXURES FILED BY THE RESPONDENT BEFORE THE CAT, ERNAKULAM.

EXT.P2: TRUE COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS HEREIN, IN OA 438/06 BEFORE THE CAT, ERNAKULAM.

EXT.P3: TRUE COPY OF THE ORDER DTD. 13.10.06 PASSED BY THE CAT ERNAKULAM IN OA 438/06.

// TRUE COPY //

TKS

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C)No.4564 OF 2007

Dated 6th March, 2007

JUDGMENT

Koshy,J.

Petitioners are questioning Ext.P3 order of the Central Administrative Tribunal in O.A.No.438 of 2006. Respondent herein was working as a Senior Tax Assistant in Central Excise. Next promotion is either as Deputy Office Superintendent in the Ministerial cadre or as Inspector of Central Excise in the Executive cadre. As per the Recruitment Rules, for the post of Inspector of Central Excise, 33 1/3% vacancies are to be filled by promotion from among the qualified Tax Assistants/Stenographers/Women Searchers/ Draftsman. Those who wish to be promoted as Inspector have to pass a Departmental Test and should possess the required service in the respective feeder cadre. Apart from the physical standard, the maximum age of eligibility for the departmental candidates is 45 years. The respondent was qualified for the vacancy that arose on 1.1.2002 when DPC was held, but, he was not considered by the DPC as he was overaged and was more than 45 years. However, because of the interim directions, the respondent was also considered later by the DPC. DPC considered the respondent's case and found that he

is entitled to be promoted as he has required qualifications. Finally, in the common order dated 11th April, 2005 in O.A.No.867 of 2003 and connected cases (Annexure A11 produced before the Tribunal), the Tribunal gave the following directions:

> "Considering the entire aspect, we are of the view that the ends of justice would be met if the respondents are directed to declare the result of the DPC (refer to interim orders dated 28.10.2003 and 30.10.2003 in OA Nos.867/03 and 876/03 respectively) in respect of the applicants and if the applicants are found eligible as per the relaxed standard, they may be granted the benefit. Further, relaxation if any, may also be considered at the discretion of the Board individually as per rules by invoking the special power being enjoyed by the Board. We order accordingly."

As per the above order, the Tribunal directed DPC to declare the result. DPC considered the matter and respondent was entitled to be promoted as per DPC's evaluation. Tribunal also considered each case to be considered by the Board as according to the Tribunal, relaxed conditions are also applicable to the above cases. The above order became final and binding on both sides.

2. By Annexure A6 age was relaxed. Relevant portion of Annexure A6 is marked as follows:

> "With the approval of Hon'ble Finance Minister it was decided that the Cadre restructuring exercise of the Customs & Central Excise Department will be completed by 31st October, 2003. The objective of this exercise is to inter-alia reduce the stagnation at all levels and improvement in employee morale. In order to ensure that a larger number of employees benefit from the exercise of restructuring, the Central Government has decided to grant the following relaxations in the Recruitment Rules:
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> (i) Relaxation in Recruitment Rules for promotion to the grade of Inspector:
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> (i) The Central Government has decided to provide for one time relaxation of 2 years in qualifying service to all officials in the pre-restructured cadre, elibible for promotion to the post of Inspector (Central Excise), Inspector (Preventive Officers) and Inspector (Examiner). However, this relaxation is not applicable in the officials claiming eligibility against entry "Stanographer grade-II with 2 years regular service" and "Tax Assistants with 2 years regular service as Tax Assistants" in the pre-restructured cadre. Further wherever the otherwise eligible candidates (including those who have become eligible after the relaxation in qualifying service now granted) have not passed the departmental examination required for such promotion, such officials may be promoted on a purely ad-hoc basis subject to their passing such examination by 31st December, 2003. In case they do not pass the departmental examination by the aforesaid date, they will stand reverted."

It was the case of the respondent that due to the age relaxation, he should have been promoted. It is to be noted that on 1.1.2002 when the vacancy arose, respondent was below 50 years and he was entitled to the benefit of the above age relaxation. According to the petitioners, the above age relaxation is applicable only from the date of notification, 8th October, 2003, and at that time the respondent has already attained the age of 50. Therefore, he cannot be considered for the promotion. According to the respondent, he was the only person from Kerala cadre entitled to be promoted and nobody else will be affected. In any event, respondent is the only person who approached the Tribunal. Respondent was qualified and he was considered by the DPC and recommended to be promoted. Even though the age relaxation order is dated 8th October, 2003, a reading of the relaxation rules shows that the same is applicable to the respondent because respondent's case was considered by the DPC and Annexure A6 was enforced at the time when respondent's matter was considered by the DPC. After detailed consideration of the various contentions, the Tribunal also stated that if the examination is not passed as on 31.12.2003, such candidates should not be recruited. Respondent has passed

all the required examinations. Since Annexure A11 order is not challenged, question of retrospective effect cannot be argued by the petitioners. The Tribunal in Ext.P1 held as follows:

> "The fact in the cases on hand is that the respondents have conducted the DPC during December, 2002, to fill up the vacancies of the post of Inspector by promotion considering all eligible candidates who possessed the requisite qualifications as on 1.1.2002. At that time the applicants had not fulfilled the requisite qualifications. As a large number of vacancies still existed in the cadre of Inspector of Central Excise due to non-availability of eligible candidates, Annexure A6 relaxation was issued as per the provisions of Rule 6 of A1 Rules to meet the requirements of the Department and in accordance with this relaxation, a DPC was conducted in October, 2003. The grievance of the applicants is that when their candidature was considered earlier, they were not qualified and when their consideration came later, they were over aged by three months. Hence, the result of these applicants were not declared according to the applicants. The applicants are claiming age relaxation and as the vacancies are of 2002, the cut-off date for consideration of promotion should be 1.1.2002."

Ext.P1 has also become final. In fact, Ext.P3 is only in consequence to Ext.P1 order. In Ext.P3 it is held as follows:

"15. As discussed in the foregoing paragraphs, in our considered opinion, the exercise of filing up the vacancies as a result of restructuring i.e., the vacancies which came into being in 2001 and proposed to be filled up in accordance with the Rrs issued in November 2002 and the further relaxations granted by the A-6 order is to be viewed as a combined exercise intended to provide maximum opportunity to the employees in service to avail of the promotional opportunities thrown open to them by the restructuring exercise so as to remove the stagnation in the Department which was the stated objective of undertaking such a reorganisation. The fact that the Department issued the relaxed guidelines in a piecemeal fashion should not act as a detriment to the employees by depriving them of benefits intended for them. Moreover, the orders as such do not state that they are to be effective only from the date of issue, if at all, they only stipulate an outer limit for completion of the action contemplated. Such a view would result in an absurd situation for eg: if A-6 order has to have force only from the date of its issue i.e. 8th October 2003, it would be valid only for two months as 31st December was fixed as the outer limit therein by which all promotions according to relaxed procedures would have to be got completed and only those who became eligible after 8th October could be considered for grant of relaxation. Surely it was not the purport of the order to deny the benefits of relaxation to the seniors who had been stagnating without promotions while granting the benefit to the juniors. Therefore we are of the view that these orders are general orders applicable to all the vacancies generated by the restructuring during the period when the process was continuing till such time as fixed by the Department declaring the restructuring exercise as closed.

> 16. Admittedly the applicant was not considered in the DPC held in November 2002. This tribunal had already directed consideration of his case by the DPC held in October 2003. Hence, in the light of the above observations, the applicant was eligible for consideration by applying the relaxation granted in Annexure-A6. We accordingly direct the respondents to promote the applicant as Inspector in the restructured vacancy for which he was found suitable by the DPC held in October 2003, applying the relaxations granted in Annexure A-6. Annexure A-14 is quashed. OA is allowed."

We agree with the reasons given by the Tribunal. In any event, it cannot be stated that finding of the Tribunal is patently illegal or perverse warranting interference under Article 226 of the Constitution of India.

The writ petition is dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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